

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAI PUR BENCH, JAI PUR

O R D E R

Motilal v. Addl. Divl. Commissioner, Kota & Ors.

S. B. CIVIL WRIT PETITION NO. 6088/1999
under Articles 226 and 227 of the
Constitution of India.

Date of Order :: 30th November, 2009

P R E S E N T

HON'BLE MR. JUSTICE GOVIND MATHUR

Mr. Kamalakar Sharma, for the petitioner.
Ms. Neelam Pareek for Mr. MK Garg, for the respondents.
Mr. D. S. Khaspuria, Additional Government Counsel.

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BY THE COURT :

The petitioner handed over 1 bigha 18 biswas of agricultural land situated at khasra No.4/2 catchment Rangpuria to the State Government for its development and after completion of catchment operations only 1 bigha 8 biswas land was reallocated to him, though he was entitled for re-allotment of land measuring 1 bigha 16 biswas.

Pointing out deficiency aforesaid and claiming to satisfy that the petitioner preferred an application before the Additional Collector, Canal Area Development (CAD), Kota-Bundi, and after making necessary inquiry as per Section 39 of the Land Development Corporation Act, 1975 (hereinafter referred to as "the Act of 1975"), the Additional Collector vide order dated 23.6.1993 accepted the application and issued direction to make available 8 biswas of land to the petitioner from the land identified under khasra No.1550, village Chitawa, catchment Rangpuria-II. An appeal as per Section 39(3) of the Act of 1975 was then filed before the Divisional Commissioner by respondent Smt. Badri Bai to assail the order dated 23.6.1993, on the counts that (1) there was no deficiency in the land reallocated to the petitioner, (2) the appellant is having old possession over the land relating to which a direction is given for allotment to the petitioner, and (3) deficiency in re-allotment, if exists, then the same may be satisfied by allotment of land from khasra No.640.

The appeal was contested by the petitioner and that came to be partly accepted vide judgment dated 16.8.1999. The Divisional Commissioner, Kota while partly accepting the appeal held that the appellant is having no locus to challenge the order passed by the Collector and also that she was a trespasser on the land in question. The

Divisional Commissioner also observed that the Tehsildar, CAD, Bigod, headquarter Kota in its report dated 5.8.1995 referred about encroachment made by the petitioner on 2 bighas 19 biswas of land and in result, remanded the matter for fresh inquiry.

While challenging the judgment dated 16.8.1999 passed by the Divisional Commissioner, Kota exercising powers under Section 39(3) of the Act of 1975, it is urged that once the Divisional Commissioner arrived at a conclusion that respondent Badri Bai was having no locus to challenge the order passed by the Collector, then no directions in appeal preferred by her could have been given. It is also urged that there is no foundation to allege encroachment by the petitioner.

Per contra, as per counsel for respondent Badri Bai the Divisional Commissioner rightly remanded the matter and if the petitioner has not made any encroachment, he shall be having ample opportunity to prove that before the competent authority.

Heard counsel for the parties.

Chapter-XI of the Act of 1975 relates to inquiries and appeals. In the instant matter the Collector made

inquiry as per Section 39(1) of the Act of 1975 and passed an order on 23.6.1993. A right to appeal as per Section 39 (3) of the Act is available to "any person aggrieved". Once the Divisional Commissioner reached at the conclusion that respondent Badri Bai was having no locus standi in the matter, then certainly she cannot be termed and treated as a person aggrieved, and as such the appeal preferred by her was not competent. Once the appeal itself is held not competent, then there was no occasion for the Commissioner to adjudicate the same on merits. In view of it, on this small point this petition for writ deserves acceptance.

Beside the above, respondent Badri Bai has accepted the order passed by the Commissioner as she has not given challenge to that, meaning thereby, she has accepted herself as a trespasser on the land in question, whereas the petitioner is contesting the alleged trespass. The trespass alleged is highly disputed and that is not on even the land which is sought to be allotted to him to satisfy the deficiency in re-allotment. The respondents on reaching at a definite conclusion regarding encroachment made by the petitioner on some other government land are having ample power to take appropriate steps to get the petitioner dispossessed from that land, however, the allegation made could not be a reason for not satisfying the established deficiency in re-allotment of land which is

nothing but exchange on surrender of his own khatedari land.

For the reasons above, this petition for writ deserves acceptance, the same is allowed. The order passed by the Divisional Commissioner dated 16.8.1999 is quashed and the order passed by the Collector dated 23.6.1993 stands restored.

No order to costs.

(GOVIND MATHUR), J.

kkm/ps.